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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,513	07/30/2001	Karen Appleby	YOR920010330US1	9755
48150	7590	03/22/2005	EXAMINER	
MCGINN & GIBB, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817			HUYNH, KIM T	
			ART UNIT	PAPER NUMBER
			2112	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/916,513	Applicant(s) APPLEBY ET AL.	
	Examiner Kim T. Huynh	Art Unit 2112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt Acknowledgement

1. Receipt is acknowledged of the request filed on 13th of January 2005 for a request for continued examination (RCE) under 37 CFR 1.114 based on the application No. 09/016513, which the request is acceptable and an RCE has been established. Currently, claims 1-33 are pending in this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8, 10-24, 26-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Humphrey (US Patent 6,434,609)

As per claims 1, 20, 26, 30, Humphrey discloses a method in a computer network of controlling an admittance of requests to at least one processing component, said method comprising: (fig.1, 11, col. 6, lines 31-39, ie internet network communication via plurality of clients)

- Evaluating an amount of traffic in said network; (col.9, lines 12-22, ie collecting information of requests implies evaluating an amount)

- Determining whether said amount exceeds a preset threshold; (col.9, lines 12-22, ie predetermine rate)
- If said amount exceeds said threshold, differentiating a type of said requests based on a content in each said request; and (col.6, lines 12-22)
- Admitting said each request only if said differentiated type meets at least one criterion for admission. (col.9, lines 12-22, ie pass request for next rule implies differentiated request type)

As per claim 2, Humphrey discloses the method further comprising returning a message to a sender of each said request not admitted. (col.7, lines 54-67, ie respond negatively(not admitted) to the requests)

As per claim 3, Humphrey discloses the method further comprising

- evaluating at least one criterion in said computer network; and (col.9, lines 19-22)
- Performing said software program in at least one of said one or more entry points. (col.9, lines 22-34)

As per claim 4, Humphrey discloses wherein said method is embodied in a software program, wherein said admittance to said at least one processing component is gained through one or more entry points, said method further comprising activating said software program in at least one of said one or more entry points. (col.7, lines 54-67)

As per claim 5, Humphrey discloses wherein said at least one processing component comprises a plurality of processing components, said at least one or

more entry points comprises a plurality of web servers, and said activation of said software program occurs in each web server in said plurality of web servers, thereby providing an admittance method that is distributed. (col.7, line 54-col.8, line 9)

As per claim 6, Humphrey discloses wherein said software program comprises a plugin software module. (col.5, lines 14-39)

As per claim 7, Humphrey discloses wherein said at least one evaluation criterion comprises a measurement of activity on said network. (col.6, lines 31-58)

As per claim 8, Humphrey discloses wherein said measurement of activity comprises a measurement of requests to said at least one processing component. (col.6, lines 30-58)

As per claim 10, Humphrey discloses the method further comprising prioritizing said requests within a same type, based on further refinement of said content. (col.10, lines 1-6, ie priority scheduling)

As per claim 11, Humphrey discloses wherein said computer network comprises a distributed heterogeneous computing environment having a dependency of said processing components represented. (col.6, lines 30-58)

As per claim 12, Humphrey discloses method further comprising: determining a load imposed on a dependee processing component. (col.6, lines 59-67)

As per claim 13, Humphrey discloses wherein said load determination is performed in a central location. (col.6, lines 30-59)

As per claim 14, Humphrey discloses wherein said at least one criterion for admission comprises said determined load on said dependee component. (col.9, lines 3-38, ie rules applied)

As per claim 15, Humphrey discloses the method further comprising associating a user defined response with selected ones of said requests that are not admitted. (col.7, line 54-col.8, line 10)

As per claim 16, Humphrey discloses wherein said admission control is applied at a tier to control admittance to a next processing component along a request flow path. (col.9, lines 3-67, ie rules regulation)

As per claim 17, Humphrey discloses wherein said at least one criterion for admission comprises a determination that a dependee processing component is not currently available. (col.7, lines 54-65, ie search elsewhere)

As per claim 18, Humphrey discloses the method further comprising:

- Determining a load of a target processing component; and (col.9, lines 12-22)
- Altering a normal response to a request based on said load determination. (col.9, lines 12-22)

As per claim 19, Humphrey discloses wherein said admitting of said each request is distributed. (col.9, lines 50-67, ie broadcast implies distributed)

As per claim 21, Humphrey discloses wherein said environment comprises a network and said direction component comprises a location information relative to said network. (col.9, lines 35-54)

As per claim 22, Humphrey discloses wherein said admission evaluation is distributed at multiple points in said distributed heterogeneous computing environment. (col.6, lines 30-58)

As per claim 27, Humphrey discloses wherein said differentiator and said switch comprises a set of computer instructions. (col.6, lines 59-67, ie request information)

As per claim 28, Humphrey discloses wherein said set of computer instructions comprises a software plugin. (col.5, lines 14-39)

As per claim 29, Humphrey discloses wherein said differentiator and said switching functions are distributed in said network. (col.9, lines 50-67, ie broadcast implies distributed)

As per claim 31, Humphrey discloses a computer network comprising:

A request throttler for controlling an admittance of requests to at least one processing component and comprising a differentiator to evaluate a message content of each of said requests and a switch to admit said each request only if said evaluation passes at least one criterion for admission, wherein said request throttler is invoked only if an amount of traffic on said computer network exceeds a preset amount. (col.9, lines 12-54)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 25, are rejected under 35 U.S.C. 103(a) as being unpatentable over Humphrey (US Patent 6,434,609) in view of Hayashi et al. (US Patent 6,598,071)

As per claims 9, 25, Humphrey discloses all the limitations as above except wherein at least one criterion for admission comprises evaluation of a response time. However, Haysashi discloses using the average traffic or the average response time per unit of time on the path between the servers and client as a criteria for switching the server. (col.12, lines 63-67)

It would have been obvious to one having ordinary skills in the art at the time the invention was made to incorporate Haysashi's teaching into Humphrey's system so as to provide a communications system further able to effectively use portions of the network having low usage rates. (col.3,lines 19-33)

6. Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humphrey (US Patent 6,434,609) in view Applicant Admitted Prior Art (AAPA)

Humphrey discloses wherein admittance of requested distribute based on a Uniform Request Locator (URL) rather than an information content of said requests.
[0029]

Humphrey discloses all the limitations above except the content handler comprising a Layer 4 Load Balancing (L4LB) component to distribute said requests. However AAPA discloses networks could have IP L4LB (Layer 4 Load Balancing)

components which distribute the incoming TCP connections from the web browsers to the web servers that are on the network. [0005]

It would have been obvious one having ordinary skills in the art at the time the invention was made to incorporate AAPA's teaching into Humphrey's system so as to have the same purpose of distributing the requests.

Response to Affidavit, Exhibit

7. The Declaration of Appleby, Under 37CFR 1.131 filed 1/13/05 under 37 CFR 1.131 has been fully considered and has overcome in re Shuster but are moot in view of the new ground(s) of rejection.

Conclusion

8. *Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Huynh whose telephone number is (571)272-3635 or via e-mail addressed to [kim.huynh3@uspto.gov]. The examiner can normally be reached on M-F 9:00AM- 6:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart can be reached at (571)272-3632 or via e-mail addressed to [mark.Rinehart@uspto.gov].*

The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9306 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-2100.



**TIM VO
PRIMARY EXAMINER**

Kim Huynh

March 20, 2005